

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

DENVER FENTON ALLEN,	:	
	:	
Plaintiff	:	
	:	NO. 5:17-cv-00301-MTT-CHW
VS	:	
	:	
CENTRAL STATE HOSPITAL, et al.,	:	
	:	
Defendants	:	
	:	

RECOMMENDATION

Pro se Plaintiff Denver Fenton Allen, currently confined in Central State Prison, submitted a *pro se* complaint under 42 U.S.C. § 1983. ECF No. 1. Plaintiff brings this complaint against various officials at Central State Hospital for multiple claims of excessive force and inadequate medical care. Plaintiff seeks to proceed in this action without the prepayment of filing fees. ECF No. 2.

The Court has now reviewed the complaint and all other submissions and finds that Plaintiff may not proceed in this action without first prepaying the full \$400.00 filing fee, as at least three of his prior federal lawsuits were dismissed as frivolous, malicious, or for failure to state a claim and count as “strikes” under 28 U.S.C. § 1915(g). It is **RECOMMENDED** that Plaintiff’s motion to proceed *in forma pauperis* be **DENIED** (ECF No. 2), and this action is **DISMISSED without prejudice**.

I. Discussion

Federal law prohibits a prisoner from bringing a civil action in federal court *in forma pauperis*

if [he] has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). This is known as the “three strikes provision.” Under § 1915(g), a prisoner incurs a “strike” any time he has a federal lawsuit or appeal dismissed on the grounds that it is frivolous or malicious or fails to state a claim. *Medberry v. Butler*, 185 F.3d 1189, 1193 (11th Cir. 1999). If a prisoner incurs three strikes, his ability to proceed *in forma pauperis* in federal court is greatly limited and leave may not be granted unless the prisoner shows an “imminent danger of serious physical injury.” *Id.*

A review of court records on the Federal Judiciary’s Public Access to Court Electronic Records (“PACER”) database reveals that Plaintiff has filed dozens of federal lawsuits, and at least three complaints were dismissed as frivolous, malicious, or for failure to state a claim. *See Allen v. Goss*, 4:14-cv-229-HLM (N.D. Ga. filed Sept 8, 2014) (dismissed under 28 U.S.C. § 1915A for failure to state a claim); *Allen v. U.S. District Court Northern District*, 4:14-cv-205-HLM (N.D. Ga. filed August 11, 2014) (dismissed under 1915A for failure to state a claim); *Allen v. Millsap*, 4:12-cv-00290-HLM (N.D. Ga. filed November 26, 2012) (dismissed as frivolous); *Allen v. Brown*, 1:12-cv-00052-JRH-WLB (S.D. Ga. filed April 11, 2012) (dismissed for abuse of judicial

process); *Allen v. Owens*, 1:12-cv-00143-JRH-WLB (S.D. Ga. filed September 21, 2012) (dismissed for failure to state a claim).

Because of this, Plaintiff may not proceed in forma pauperis unless he can show that he qualifies for the “imminent danger” exception in § 1915(g). *Medberry*, 185 F.3d at 1193. To satisfy this provision a prisoner must allege specific facts that describe “an ongoing serious physical injury, or of a pattern of misconduct evidencing the likelihood of imminent serious physical injury.” *Sutton v. Dist. Attorney's Office*, 334 F. App’x 278, 279 (11th Cir. 2009) (quoting *Brown v. Johnson*, 387 F.3d 1344, 1350 (11th Cir. 2004)). When reviewing a pro se prisoner’s complaint for this purpose, the district court must accept all factual allegations in the complaint as true and view all allegations of imminent danger in Plaintiff’s favor. *Brown v. Johnson*, 387 F.3d 1344, 1347 (11th Cir. 2004); *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

In his complaint, Plaintiff acknowledges that he has accumulated three strikes and argues that he should be allowed to proceed under the imminent danger exception. ECF No. 1 at 5. Plaintiff appears to provide two reasons why he meets the standard. First, Plaintiff indicates that he has been subjected to excessive force and inmate attacks throughout his incarceration. Plaintiff’s vague and generalized statements that officers and inmates are out to hurt him, however, are not sufficient to satisfy the imminent danger exception. While Plaintiff describes several incidents of excessive force over the past eight or nine years, these incidents occurred at different locations and involve different individuals. Plaintiff describes these incidents as a “pattern,” but provides no factual

allegations to suggest that these past events indicate or suggest an ongoing threat.

Second, Plaintiff has identified twenty-two medical conditions which he suffers from and asserts that his medical care is “lackin’ [and] very insufficient.” Plaintiff indicates that he is both receiving medical care and being denied treatment altogether. He also asserts that because of this his life is in danger. ECF No. 1 at 8. The most serious of Plaintiff’s alleged medical conditions include a bowel blockage, spine injuries, “plastic fragment in lungs,” brain injuries, “CTE,” and “seizures, ect. ect.” ECF No. 1 at 9; ECF No. 8. Plaintiff concludes that he has “very serious, life-threatening med. Problems, could kill me. Both, very imminent.” ECF No. 1 at 5. He further explains that “I could die. MCG/med. College of Ga. – attention, Mob Coreleone’s, Gay, Michael Coreleone’s Godfather, Mob Coreleone’s Gangster, I don’t want to die.” *Id.* at 8. Plaintiff’s allegations of danger, however, are vague, conclusory, and devoid of factual detail.

While Plaintiff claims he is in danger due to the medical treatment he receives for his twenty-two medical conditions, Plaintiff has not alleged specific facts concerning any aspect of his medical conditions, his medical care, the danger he may face, the nature of his ailments, or what injuries he may face without treatment. To satisfy the imminent danger exception, Plaintiff must do more than list medical conditions and conclude that health care providers are “malpracticing on [him],” he needs “to see a slue of Italy Doctors,” and that he may die without treatment. *See Skillern v. Paul*, 202 F. App’x 343, 344 (11th Cir. 2006) (no imminent danger where appellant alleged he was not receiving medication, but failed to provide descriptions of his condition or potential injury).

The Eleventh Circuit has held that allegations of untreated medical conditions can, under certain circumstances, satisfy the imminent danger standard, but such allegations must involve at least basic details about the nature of the untreated medical condition and the specific health threat posed. *See e.g. Brown v. Johnson*, 387 F.3d 1344 (11th Cir. 2004) (finding allegations that withdrawal of HIV treatment caused specific medical problems sufficient to state imminent danger). In this case, Plaintiff has simply listed medical conditions and stated he faces death if they are not treated. Plaintiff's allegations are, at times, incredible and include at least one diagnosis which can only be obtained post-mortem. The claims are also predicated upon Plaintiff's belief that his medical records are being falsified. In his complaint, he indicates that he has received X-rays, MRIs, and CT-scans, but they have been falsified. ECF No 1 at 10. To the extent that Plaintiff indicates he is not receiving medical treatment, the allegation is directly contradicted.

Considered as a whole and construed liberally, with all allegations accepted as true, Plaintiff's Complaint fails to meet the imminent danger exception. While Plaintiff states that he is in imminent danger, Plaintiff has simply listed dozens of medical problems, some of which are incredible, and concluded that he faces serious injury. His allegations are self-contradictory, vague, conclusory, and lack any specific details concerning the nature of the danger he faces, the nature of his medical conditions, or what medical treatment he believes he should receive. Indeed, Plaintiff has not even generally described what sort of ill effects he has suffered or may suffer. Nor has he stated that he has suffered ill effects, other than to say that he is in danger and could die.

Plaintiff's nonspecific and conclusory allegations of danger based on generalized and vague allegations of medical treatment and past violence are insufficient to meet the imminent danger exception.

II. Conclusion

Because Plaintiff has three prior dismissals that properly qualify as strikes under 28 U.S.C. § 1915(g), it is **RECOMMENDED** that his motion to proceed *in forma pauperis* be (ECF No. 2) **DENIED**. Once a plaintiff is denied *in forma pauperis* status, he cannot simply pay the filing fee and proceed with his complaint. *Dupree v. Palmer*, 284 F.3d 1234, 1236 (11th Cir. 2002). Accordingly, it is further **RECOMMENDED** that Plaintiff's complaint be **DISMISSED without prejudice**. *Id.*

Pursuant to 28 U.S.C. § 636(b)(1), Plaintiff may serve and file written objections to this Recommendation, or seek an extension of time to file objections, WITHIN FOURTEEN (14) DAYS after being served with a copy thereof. The District Judge shall make a de novo determination of those portions of the Recommendation to which objection is made. All other portions of the Recommendation may be reviewed for clear error.

Plaintiff is further notified that, pursuant to Eleventh Circuit Rule 3-1, "[a] party failing to object to a magistrate judge's findings or recommendations contained in a report and recommendation in accordance with the provisions of 28 U.S.C. § 636(b)(1) waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions if the party was informed of the time period for objecting and the

consequences on appeal for failing to object. In the absence of a proper objection, however, the court may review on appeal for plain error if necessary in the interests of justice.”

SO RECOMMENDED, this 5th day of October, 2017.

s/ Charles H. Weigle

Charles H. Weigle

United States Magistrate Judge